



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

September 27, 2006

David Green
Regional Environmental Coordinator
AFRPA Western Region Execution Center
3411 Olson Street
McClellan, CA 95652-1003

Re: Draft Finding of Suitability to Transfer (FOST), Subparcel D-8 (Hospital)

Dear Mr. Green

EPA has reviewed the subject FOST for transferring 4 acres. The property includes the Wastewater Treatment Facility and Base Medical Center, and is considered Environmental Condition Category (ECC) 1. The following comments are provided:

1. If there is no groundwater contamination at this site, the FOST should clearly state this information. Additionally, EPA believes a deed restriction is needed to prohibit pumping of groundwater for preventing adverse impacts on the adjacent groundwater contamination plumes.
2. Section 4. Because lead based paint (LBP), Pesticides (Dieldrin) and Abestos are present on the parcel, and notifications to the transferee are required, the property should not be classified as ECC 1. We recommend an ECC 3, which is defined as areas where contamination is present, but below action levels.
3. Section 5. The text states that "factors that require either deed restrictions or specific notifications are identified..." but the AF does not propose any deed restrictions. If no deed restrictions will in fact be included, the AF should clarify that in this paragraph. And, for each subsection in Section 5 that proposes a deed notification or covenant, the AF should provide that draft language.
4. Section 5.6. The FOST should have a deed restriction for lead based paint (LBP) that prohibits any residential reuse, unless a LBP risk assessment and any required abatement is completed prior to residential use.

5. Section 5.9. Should "The Gas Company" be changed to "Southern California Gas Company"?

6. Section 5.10. The last sentence beginning with "This Factor requires" is confusing. Please explain what is required, by whom, and what specifically the AF is planning to do.

7. Section 5.12, 1st Paragraph. The text inaccurately refers to Section 107(i) of CERCLA when it states that termiticide "was applied in accordance with regulations (42 USC §9607(i) and Federal Insecticide, Fungicide and Rodenticide Act [FIFRA])." Termiticide cannot be applied "in accordance" with Section 107(i) because that statutory provision does not include any direction for the application of pesticides. Further Section 107(i) does not exempt the application of pesticide from the definition of a "release" under CERCLA but only provides that, in general, EPA may not recover response costs resulting from pesticide application. EPA has consistently maintained that Section 107(i) does not limit the authority or obligation of the Air Force to respond to pesticide-related contamination. It is our position that where contamination resulting from pesticide application poses a risk to human health or the environment, such contamination must be addressed by the Air Force. Accordingly, the AF should conduct adequate soil sampling to evaluate the risks from pesticides.

8. Section 5.12, 2nd Paragraph. The text states that "Institutional Controls will be incorporated in the deed as grantee covenants and in a state land use covenant (SLUC)," but it should also state what restrictions will be implemented.

9. Section 6. The Regional Water Quality Control Board should be mentioned in this section

10. Section 8. The FOST is missing the required covenants for property transfer. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) requires a covenant indicating that all remedial action necessary to protect human health and the environment, with respect to any hazardous substances remaining on the Property, has been taken prior to transfer of such property by deed (*see* CERCLA § 120 (h)(3)(A)(ii)(I)). Accordingly, replace the entire Section 8 with following suggested language:

"The deed proposal has been adequately assessed and evaluated for: (a) the presence of hazardous substances and contamination on the Property (b) environmental impacts anticipated from the intended use for the Property, (c) adequacy of use restrictions and notifications to ensure that the intended use is consistent with protection of human health and the environment, and (d) adequate notice of disclosures, including those required by CERCLA 120(h). The anticipated future use of this Property does not present a current or future risk to human health or the environment subject to inclusion and compliance with the appropriate restrictions on use and disclosures as addressed above. The following covenant CERCLA language will be included in the Deed:

- CERCLA 120(h)(3)(A)(ii)(I) warranting that all remedial action under CERCLA necessary to protect human health and the environment with respect to hazardous substances remaining on the Property have been taken before the date of transfer.

- CERCLA 120(h)(3)(A)(ii)(II) warranting that any remedial action under CERCLA found to be necessary after the date of transfer with respect to such hazardous substances remaining on the property shall be conducted by the United States.
- CERCLA 120(h)(3)(A)(iii) granting the United States access to the Property in any case in which remedial action or corrective action is found to be necessary after the date of transfer.

The Conditions of CERCLA Section 120(h) have been satisfied. Therefore, the property is suitable for transfer.”

Thank you for considering our concerns. If you have any questions, please contact me at extension (415) 972-3193.

Sincerely,


James Chang
Remedial Project Manager

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